



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

REGION III  
2443 WARRENVILLE RD. SUITE 210  
LISLE, IL 60532-4352

July 15, 2020

IA-20-023

Dennis Bergmooser  
[HOME ADDRESS DELETED]

PER 10 CFR 2.390]

SUBJECT: NOTICE OF VIOLATION, NRC INVESTIGATION REPORT NO. 3-2019-004

Dear Mr. Bergmooser:

This letter refers to the investigation completed on November 18, 2019, by the U.S. Nuclear Regulatory Commission's (NRC) Office of Investigations (OI) regarding the behavior observation program (BOP) and vital area (VA) status verifications at the Fermi Nuclear Power Plant, Unit 2 (Fermi) located in Newport, Michigan. The purpose of the investigation, in part, was to determine whether you, as a licensee manager: (1) deliberately instructed an administrative assistant to perform unconfirmed BOP and VA status verifications, which are required by NRC regulations to be completed by a cognizant licensee manager or supervisor; and (2) deliberately falsified BOP and VA status verifications.

In the letter dated April 27, 2020, transmitting the factual summary of the OI report, the NRC described the apparent violations to you and informed you that the NRC was considering escalated enforcement action against you. In the letter, we provided you the opportunity to address the apparent violations identified in the summary by attending a predecisional enforcement conference, requesting Alternative Dispute Resolution (ADR) mediation, or providing a written response before we made our final enforcement decision. In an email from your attorney dated May 15, 2020, you provided a response to the apparent violations.

The NRC carefully considered the information provided in the May 15, 2020, email from your attorney and determined that it did not constitute new information (i.e., material information that was not considered during the investigation). Based on the information developed during the investigation and the information you provided in your attorney's email, the NRC has determined that deliberate violations of NRC requirements occurred.

The violations involve your failure to comply with Title 10 of the *Code of Federal Regulations* (CFR) Section 50.5, the NRC's rule on deliberate misconduct. Contrary to the requirements of 10 CFR 50.5(a)(1), you, as a licensee manager at Fermi, engaged in deliberate misconduct that caused the licensee to violate NRC requirements. From July 26, 2018, to January 16, 2019, you deliberately assigned your administrative assistant the task to record and approve the NRC-required monthly BOP and VA status verifications of those workers who reported to you, even though you knew that NRC regulations require that a licensee manager or supervisor approve them. As a result, multiple inaccurate verifications were submitted to the licensee during this period. Thus, your deliberate failure to approve, and to update and re-approve, the individuals authorized to have unescorted access to specific nuclear power plant vital areas, and your deliberate failure to implement Fermi's written procedures to meet the BOP requirements in "General Administration Conduct Manual MGA09, Revision 47," titled "Access Control," caused the licensee to violate the requirements of 10 CFR 73.56(j), 10 CFR 50.9(a),

10 CFR 26.27(a), 10 CFR 26.33, and 10 CFR 26.71(b). A copy of the public letter to Fermi transmitting the notice of violation is enclosed for your information (Enclosure 2).

Once Fermi staff identified that you were not following its procedure and NRC requirements, they implemented corrective actions that included: (1) performing the required validations for the affected individuals; (2) reviewing safety-related work supervised by you and concluding that no adverse consequences had occurred as a result of your actions; and (3) terminating your employment.

In determining the appropriate sanction to be issued in this case, the NRC considered issuing an Order prohibiting your involvement in NRC licensed activities as a result of your actions. However, after consultation with the Director, Office of Enforcement, and after considering the circumstances of this case, including: (1) the actual safety/security significance was very low, and (2) Fermi Nuclear Power Plant took action regarding your wrongdoing, including terminating your employment and removing your access to the facility, I have decided to issue the enclosed Notice of Violation (Enclosure 1). Given the very low safety/security significance of the underlying issue and the deliberate nature of your actions, these violations have been categorized in accordance with the NRC Enforcement Policy as a Severity Level III problem. You should be aware that if you are involved in NRC-licensed activities in the future, additional deliberate violations could result in more significant enforcement action or criminal action being taken against you.

Since you are no longer employed by Fermi, you are not required to respond to the Notice of Violation at this time. However, if you apply for a position at an NRC-licensed facility in the future, you will be required, pursuant to the provisions of 10 CFR 2.201, to submit a written response. In that case, you should follow the instructions specified in the enclosed Notice.

If you disagree with this enforcement action, you may deny the violations within 30 days of the date of this letter as described in the Notice, or you may request ADR with the NRC in an attempt to resolve this issue. This request must be made within 30 days of the issuance date of the Notice. ADR is a general term encompassing various techniques for resolving conflict outside of court using a neutral third party. The technique that the NRC employs is mediation. Mediation is a voluntary, informal process in which a trained neutral (the "mediator") works with parties to help them reach resolution. If the parties agree to use ADR, they select a mutually agreeable neutral mediator who has no stake in the outcome and no power to make decisions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues. Additional information on the NRC's ADR program can be found at: <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>. The Institute on Conflict Resolution (ICR) at Cornell University has agreed to facilitate NRC's program as a neutral third party. **Please contact ICR at 607-255-1124 within 10 days of the date of this letter if you are interested in pursuing resolution of this issue through ADR. In addition, if you choose this option, also please contact Jamnes Cameron, Enforcement/Investigations Officer at 630-810-4373 within 10 days of the date of this letter.**

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice and Procedure," a copy of this letter, its enclosures, and your response, if you choose to provide one, will be made available electronically for public inspection in the NRC Public Document Room or from the NRC's Agencywide Documents Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>, in 45 days unless you provide a sufficient basis to withdraw the violations within the 30 days specified above for responding to the Notice. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without

redaction. The NRC also includes significant enforcement actions on its Web site at (<http://www.nrc.gov/reading-rm/doc-collections/enforcement/actions/>). You should be aware that all final NRC documents, including the final OI investigation report, are official agency records and may be made available to the public under the Freedom of Information Act (FOIA), subject to redaction of certain information in accordance with the FOIA

In addition, this letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html>.

Please feel free to contact Jamnes Cameron at 630-810-4373 if you have any questions.

Sincerely,

*/RA/*

John. B. Giessner  
Regional Administrator

Enclosures:

1. Notice of Violation
2. Letter to Fermi Nuclear Power Plant (Public)

Letter to D. Bergmooser from John B. Giessner dated July 15, 2020

SUBJECT: NOTICE OF VIOLATION, NRC INVESTIGATION REPORT NO. 3-2019-004

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DATE	06/18/20		06/24/20		06/30/2020		7/13/2020
OFFICE	NSIR		OGC		RIII-EICS		RIII-ORA
NAME	SPrasad <sup>1</sup>		TSteinfeldt <sup>1</sup>		JCameron		JGiessner
DATE	7/13/2020		7/13/2020		7/14/2020		7/15/2020

OFFICIAL RECORD COPY

1 Concurrence for OE, NSIR, and NLO from OGC received by D. Furst email dated July 13, 2020.

## NOTICE OF VIOLATION

Dennis Bergmooser  
[HOME ADDRESS DELETED  
PER 10 CFR 2.390]

IA-20-023

During a U.S. Nuclear Regulatory Commission (NRC) investigation completed on November 18, 2019, violations of NRC requirements were identified. In accordance with the NRC Enforcement Policy, the violations are listed below:

- A. 10 CFR 50.5(a)(1) requires, in part, that any employee of a licensee may not engage in deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any rule, regulation, or Order; or any term, condition, or limitation of any license issued by the Commission.

10 CFR 73.56(j) requires, in part, that licensees or applicants shall establish, implement, and maintain a list of individuals who are authorized to have unescorted access to specific nuclear power plant vital areas (VA) during nonemergency conditions. The list must include only those individuals who have a continued need for access to those specific VAs in order to perform their duties and responsibilities. The list must be approved by a cognizant licensee or applicant manager or supervisor who is responsible for directing the work activities of the individual who is granted unescorted access to each vital area, and updated and reapproved no less frequently than every 31 days.

Contrary to the above, from July 26, 2018, to January 16, 2019, you, as the cognizant licensee manager or supervisor who was responsible for directing the work activities of the individual who is granted unescorted access to each vital area, deliberately failed to approve, and to update and reapprove, the list of individuals who are authorized to have unescorted access to specific nuclear power plant vital areas during nonemergency conditions no less frequently than every 31 days. Specifically, you directed an individual, who was not a cognizant licensee or applicant manager or supervisor responsible for directing the work activities, to update and reapprove access to vital areas for multiple individuals.

- B. 10 CFR 50.5(a)(1) requires, in part, that any employee of a licensee may not engage in deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any rule, regulation, or Order; or any term, condition, or limitation of any license issued by the Commission.

10 CFR 26.27(a) requires that each licensee and other entity shall establish, implement, and maintain written policies and procedures to meet the general performance objectives and applicable requirements of this part.

10 CFR 26.33 requires that licensees and other entities shall ensure that the individuals who are subject to this subpart are subject to behavioral observation. Behavioral observation must be performed by individuals who are trained under 10 CFR 26.29 to detect behaviors that may indicate possible use, sale, or possession of illegal drugs; use or possession of alcohol on site or while on duty; or impairment from fatigue or any cause that, if left unattended, may constitute a risk to public health and safety or the common defense and security. Individuals who are subject to this subpart shall report

Enclosure

any fitness for duty (FFD) concerns about other individuals to the personnel designated in the FFD policy.

Section 5.5.1.1 of Revision 47 to the licensee's Conduct Manual MGA09 implements the 10 CFR Part 26 requirements and states, in part, that revalidations satisfy the continuing 30-day behavior observation and access level revalidations as required in 10 CFR 26.71 and 10 CFR 73.56(j).

Section 5.5.3.3 of Revision 47 to the licensee's Conduct Manual MGA09 states, in part, that effective behavioral observation depends on the supervisor's judgment and working knowledge of each employee.

Section 5.5.3.4 of Revision 47 to the licensee's Conduct Manual MGA09 states, in part, that behavioral observation does not have to be completed by the employee's direct supervisor, but shall be completed by qualified BOP with current unescorted access and verified by the BOP Supervisor prior to electronically signing the revalidation.

Contrary to the above, from July 26, 2018, to January 16, 2019, you deliberately failed to implement written policies and procedures to meet the behavioral observation requirements specified in 10 CFR 26.33. Specifically, you deliberately failed to satisfy the continuing 30-day behavior observation specified in the licensee's Conduct Manual MGA09, in that, you failed to complete the behavioral observations and electronically sign the revalidation. You, as a manager responsible for the revalidations, deliberately directed a nonsupervisory subordinate, who was not trained under 10 CFR 26.29, to perform continuous 30-day behavior observation revalidations.

This is a Severity Level III problem (Section 6.1 of the NRC Enforcement Policy).

Since you are no longer employed by the licensee, you are not required to respond to the Notice at this time unless you contest the violations. Should you contest the violations, a response is required within 30 days of the date of this letter, addressing the specific basis for disputing the violations. In addition, if you apply for a position at an NRC-licensed facility in the future, you will be required, pursuant to the provisions of 10 CFR 2.201, to submit a written response. This response should be clearly marked as a "Reply to a Notice of Violation; IA-20-023" and should include: (1) the reason for the violation, or, if contested, the basis for disputing the violation; (2) the corrective steps that have been taken and the results achieved; (3) the corrective steps that will be taken to avoid further violations; and (4) the date when full compliance was or will be achieved. In such case, the reply should be sent to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555-0001 with a copy to the Regional Administrator, Region III, 2443 Warrenville Road, Suite 210, Lisle, IL 60532-4352. If you contest this enforcement action, you should also provide a copy of your response, with the basis for your denial, to the Director, Office of Enforcement, United States Nuclear Regulatory Commission, Washington, DC 20555-0001.

Your response, if you provide one, will be made available electronically for public inspection in the NRC Public Document Room and in the NRC's Agencywide Document Access and Management System (ADAMS), accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. To the extent possible, your response should not include any personal privacy, proprietary, or safeguards information so that it can be made available to the public without redaction. If personal privacy or proprietary information is necessary to provide an acceptable response, then please provide a bracketed copy of your

response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

This letter will be maintained by the Office of Enforcement in an NRC Privacy Act system of records, NRC-3, Enforcement Actions Against Individuals. This system, which is not publicly-accessible, includes all records pertaining to individuals who are being or have been considered for enforcement action, whether such action was taken or not. The NRC-3 system notice, which provides detailed information about this system of records, can be accessed from the NRC Web site at <http://www.nrc.gov/reading-rm/foia/privacy-systems.html> .

Dated this 15<sup>th</sup> day of July\_2020



**UNITED STATES  
NUCLEAR REGULATORY COMMISSION**

REGION III  
2443 WARRENVILLE RD. SUITE 210  
LISLE, IL 60532-4352

July 15, 2020

EA-19-138

Mr. Peter Dietrich, Senior VP  
and Chief Nuclear Officer  
DTE Energy Company  
Fermi-2 – 260 TAC  
6400 North Dixie Highway  
Newport, MI 48166

SUBJECT: FERMI NUCLEAR POWER PLANT, UNIT 2 - NOTICE OF VIOLATION; NRC  
INVESTIGATION REPORT NO. 3-2019-004; NRC INSPECTION REPORT  
NO. 05000341/2020404

Dear Mr. Dietrich:

This letter refers to the U.S. Nuclear Regulatory Commission (NRC) security baseline inspection completed on November 18, 2019, at your Fermi Nuclear Power Plant, Unit 2 facility (Fermi 2). The details of the inspection were documented in NRC Security Baseline Inspection Report No. 05000341/2020403 (Non-Public) issued on April 29, 2020. On February 21, 2019, NRC's Office of Investigations (OI), Region III Field Office initiated an investigation that it completed on November 18, 2019. The purpose of the investigation, in part, was to determine whether a licensee manager at Fermi 2 deliberately caused the licensee to violate NRC requirements by assigning tasks to an administrative assistant who was not qualified or authorized to perform those tasks.

Based on the results of the inspection and investigation, the NRC identified apparent violations of NRC requirements. The circumstances surrounding the apparent violations, the significance of the issues, and the need for lasting and effective corrective actions were discussed with members of your staff at the inspection exit meeting on April 29, 2020.

In our April 29, 2020, letter (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20120A443) transmitting the inspection report, we provided you with the opportunity to address the apparent violations identified in the report by attending a predecisional enforcement conference, requesting Alternative Dispute Resolution (ADR) mediation, or providing a written response before we made our final enforcement decision. In a letter dated May 29, 2020, (ML20150A598) you provided a written response to the apparent violations.

Based on the information developed during the inspection and investigation, and the information that you provided in your response to the inspection report dated May 29, 2020, the NRC has determined that violations of NRC requirements occurred. These violations are cited in the enclosed Notice of Violation (Notice) (Enclosure 1) (Non-Public) and the circumstances surrounding them are described in detail in the subject inspection report. The violations involve a

Enclosures 1 and 2 contain Sensitive  
Unclassified Non-Safeguards Information.  
When separated from Enclosures 1 and 2,  
this transmittal document is decontrolled.

P. Dietrich

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licensee manager at Fermi 2 who deliberately assigned his administrative assistant the task of recording monthly verifications required by NRC regulations when this individual was not authorized or qualified to perform those verifications. These circumstances occurred from July 26, 2018, until their identification on January 16, 2019.

The violations are of concern to the NRC for the reasons stated in the Final Determination of Significance (Enclosure 2) (Non-Public). Therefore, these violations are categorized collectively in accordance with the NRC Enforcement Policy as a Severity Level III problem. In accordance with the NRC Enforcement Policy, a base civil penalty in the amount of \$150,000 is considered for a Severity Level III problem.

Because the violations were deliberate, the NRC considered whether credit was warranted for *Identification* and *Corrective Action* in accordance with the civil penalty assessment process in Section 2.3.4 of the Enforcement Policy. The NRC determined that credit for *Identification* was warranted because your staff identified the violations and notified the NRC of the issues on January 16 and 25, 2019. In NRC Inspection Report No. 05000341/2020403, the NRC described its understanding of the actions implemented to correct the violations. In your May 29, 2020, letter you described the corrective actions taken to correct the violations. These corrective actions are also documented in Enclosure 2. Based on these corrective actions, the NRC has determined that *Corrective Action* credit is warranted. Therefore, to encourage prompt identification and comprehensive correction of violations, I have been authorized, after consultation with the Director, Office of Enforcement, to issue the enclosed Notice and to not propose a civil penalty for these violations. However, significant violations in the future could result in a civil penalty.

The NRC has concluded that information regarding: (1) the reason for the violations; (2) the corrective actions that have been taken and the results achieved; and (3) the date when full compliance was achieved is already adequately addressed on the docket in Inspection Report No. 05000341/2020403 and in your letter dated May 29, 2020. Therefore, you are not required to respond to this letter unless the description therein does not accurately reflect your corrective actions or your position. In that case, or if you choose to provide additional information, you should follow the instructions specified in the enclosed Notice.

In accordance with Title 10 of the *Code of Federal Regulations* (CFR) 2.390 of the NRC's "Rules of Practice and Procedure," a copy of this letter will be made available electronically for public inspection in the NRC Public Document Room or in the NRC's ADAMS, accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. You should also be aware that all final NRC documents, including the final OI investigation report, are official agency records and may be made available to the public under the Freedom of Information Act (FOIA), subject to redaction of certain information in accordance with the FOIA

However, the enclosures to this letter contain Security-Related Information in accordance with 10 CFR 2.390(d)(1), and its disclosure to unauthorized individuals could present a security vulnerability. Therefore, the material in the enclosures will not be made available electronically for public inspection in the NRC Public Document Room or in the NRC's ADAMS. If you choose to respond and Security-Related Information is necessary to provide an acceptable response, please mark the top of each page of your entire response "Security-Related Information – Withhold from Public Disclosure under 10 CFR 2.390" and follow the instructions for withholding in 10 CFR 2.390(b)(1).

P. Dietrich

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In accordance with 10 CFR 2.390(b)(1)(ii), the NRC is waiving the affidavit requirements for your response.

If you have any questions concerning this matter, please contact Jamnes Cameron, Enforcement/Investigations Officer, at 630-810-4373.

Sincerely,

*/RA/*

John B. Giessner  
Regional Administrator

Docket No. 050-00341  
License No. NPF-43

Enclosures:

1. Notice of Violation (Non-Public)
2. Determination of Severity Level and Description of Corrective Actions (Non-Public)